

## REMARKS

### **I. Amendments to the Specification and Claims**

In the specification, the title has been amended as per the Examiner's suggestion, and the paragraph spanning pages 23-24 has been amended to eliminate a browser-executable hyperlink.

Claim 14 has been canceled and Claims 6, 7, and 13 have been revised. Claims 1-5 and 9-12 are withdrawn. Upon entry of the present response, therefore, claims 6-8 and 13 will be pending.

### **II. Objections to the Specification**

The Examiner has objected to the specification for containing an embedded hyperlink (page 23, line 26). Applicant has amended the specification and believes the amendment obviates the objection.

The Examiner also objected to the title of the invention as allegedly not being descriptive. Solely for the purpose of advancing prosecution, Applicant has amended the title, thereby obviating the objection.

In light of the amendments, reconsideration and withdrawal of the objections are respectfully requested.

### **III. Claim Objections**

The Examiner objected to claim 6 for its dependency on withdrawn claims 1 and 2. Applicant has amended claim 6 in a manner believed to obviate this objection.

### **IV. Rejections Under 35 U.S.C. §101**

The Examiner rejected Claims 6-8 for alleged coverage of non-statutory subject matter. In particular, the Examiner asserted that the claims read on a polypeptide that is not "isolated," which therefore is a product of nature.

Applicant has amended claim 6 to recite an "isolated" polypeptide, thereby obviating the stated grounds for rejection. Withdrawal of the rejection is respectfully requested.

### **V. Rejections of Under 35 U.S.C. § 112, ¶1**

The Examiner rejected claims 6-8 and 13 for an alleged lack of enablement. Applicant respectfully traverses the rejection.

According to the Examiner, the specification is enabling for an isolated polypeptide that comprises the amino acid sequence of SEQ ID NO: 48 but not a variant thereof, characterized by a deletion, substitution, or insertion. Applicants respectfully disagree. A skilled person would recognize readily that minor changes can be made to SEQ ID NO:48 that will not effect its ability to stimulate hematopoietic cells.

Nevertheless, to advance prosecution Applicant has chosen to revise claims 6 and 13 in a manner that obviates the Examiner's stated concern. Likewise to advance prosecution, Applicant also has amended the claims to recite an activity supportive of "proliferation of erythroid progenitor cells." This is a feature that the Examiner acknowledges is supported by Applicant's demonstration in the application of erythroid progenitor cell proliferation.

The Examiner has asserted that Applicant's data fail to support the use of a composition as claimed for *stimulating* hematopoietic cells. Applicant would emphasize, however, that Figure 9 of this application shows an increase in BFU-E, which the skilled person would tend to correlate with the high chimerism of donor cells after transplantation. So informed, the skilled person would consider high BFU-E as indicative of an activity supporting the survival *or* proliferation of hematopoietic stem cells or progenitor cells.

The Examiner also rejected claims 6-8 and 13 for an alleged lack of written description vis-à-vis "functionally equivalent" polynucleotides and polypeptides. While respectfully disagreeing, Applicant has opted to advance prosecution by amending to claims to address the examiner's stated concern.

In light of the foregoing, therefore, reconsideration and withdrawal of the rejection are respectfully requested.

#### **VI. Rejections Under 35 U.S.C. §102(e)**

The Examiner rejected claims 6-8 and 13 for alleged anticipation by Ceccardi *et al.*, US 2003/0022217. Applicant submits with this response a declaration under 37 C.F.R. §1.131, attesting that the claimed invention (i) was conceived before Ceccardi's asserted art-effective date and (ii) was reduced to practice shortly thereafter. Furthermore, the timing of the noted events evinces Applicant's diligence in this regard.

With Ceccardi thus removed as prior art to the instant claims, the Section 102(e) rejection should be withdrawn. *See* MPEP § 715.

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Applicant submits that the present application is in condition for allowance, and an early indication to this effect is requested. Examiner Bunner is invited to contact the undersigned directly, should by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees, which may be required under 37 C.F.R. §§ 1.16-1.17, and to credit any overpayment to Deposit Account No. 19-0741. Should no proper payment accompany this response, then the Commissioner is authorized to charge the unpaid amount to the same deposit account. If any extension is needed for timely acceptance of submitted papers, then Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of the relevant fee(s) from the deposit account.

Respectfully submitted,

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